CITY OF SPOKANE HEARING EXAMINER

Re:	Appeal by Tammi Ray and Dave Kelly of a decision by the Planning Director Approving an Administrative Conditional Use Permit for Cottage Housing	))))))	FINDINGS, CONCLUSIONS AND DECISION FILE NO. AP-08-04 (Z2007-081-CUP)

SUMMARY OF APPEAL AND DECISION

Summary of Appeal: The appellants filed an appeal of a decision by the Planning Director approving a conditional use permit for cottage housing on the City's north side.

Decision: The decision of the Planning Director is upheld.

FINDINGS OF FACT
BACKGROUND INFORMATION

Appellants:
Tammi Ray
1829 West Eulcid Ave
Spokane, WA 99205

Dave Kelly
3138 North Ash Ct
Spokane, WA 99205

Respondent:
City of Spokane Planning Services Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Represented by:
Dave Compton, Acting Current Planning Manager
808 West Spokane Falls Boulevard
Spokane, WA 99201

Applicant:
Ash Court Development, LLC
c/o Wayne & Marcie Endicott
6204 S Latah Hills Ct
Spokane, WA 99205

Represented by:
Mountain Crest Enterprises, Inc.
c/o Dan Wolf
PO Box 1800
Mead, WA 99021

Authorizing Ordinances: SMC 17C.110, Table 17C.110-1, Table 17C.110-2, 17C.110.350, 17G.060 and 17G.060.170

Zoning: RSF (Residential Single Family)

Comprehensive Plan Land Use Designation: The property is designated as Residential 4-10 on the City's 2001 Comprehensive Plan.

Date of Decision being Appealed: February 19, 2008

Date of Appeal: Appellant Tammi Ray's appeal was filed on March 3, 2008, and appellant Dave Kelly's appeal was filed on March 4, 2008.

Hearing Date: April 3, 2008.

Testimony:

Dave Kelly
3138 N Ash Pl
Spokane, WA 99205

Tammi Ray
1829 W Euclid Ave
Spokane, WA 99205

Grant Cummings
1721 W Euclid Ave
Spokane, WA 99205

Dennis Magner
1703 W Euclid Ave
Spokane, WA 99205

Dan Wolf
PO Box 1800
Mead, WA 99021

Dave Compton, Acting Current Planning Manager
City of Spokane
808 W Spokane Falls Blvd
Spokane, WA 99201

Exhibits:

1. Application for Appeal
   - 1A Appeal filed by Tammi S Ray
   - 1B Appeal filed by Dave Kelly
2. Staff Report
3. Applications including:
   - 3A General Application with project narrative
   - 3B Administrative Conditional Use Permit Application
   - 3C Applications for Notification Map
   - 3D Site Plan
   - 3E Cottage Building Plans
   - 3F Vicinity Map and legal description
   - 3G Figure 17C.110-B Zero Lot Line Development
4. Administrative Conditional Use Permit Counter Complete Checklist
5. Predevelopment Notes
6. Engineering Services comments
7. Fire Department comments

8. Solid Waste comments
9. Traffic comments
10. Trip Generation and Distribution Letter
11. Department of Ecology comments
12. Spokane Regional Clean Air Agency comments
13. Avista Utilities comments
14. Notice Map
15. Parcel Notification list
16. Notice
17. Affidavit of Mailing dated 01-23-08
18. Affidavit of Posting dated 01-23-08
19. Affidavit of sign removal dated 02-14-08
20. Determination of SEPA Exemption
21. Minutes from the Drumheller Springs Park Neighborhood meeting
22. Administrative Preparation Checklist
23. Letter dated 11-14-07 to Interested Parties from Dave Compton
    re: requesting comments
24. Letter dated 0-17-08 to Dan Wolf from Dave Compton
    re: notice of application instructions
25. Email dated 01-29-08 to Dave Comption from Tammi Ray
    re: requesting additional information
26. Letter dated 01-29-08 to Dave Compton from Roland Lamarche
    re: concerns and questions regarding the project
27. Letter dated 01-29-08 to Dave Compton from Sheri Lattimore
    re: concerns regarding the project
28. Email dated 01-31-08 to Dave Compton from Terry Dobson
    re: density concerns
29. Letter dated 02-01-08 to Dave Compton from John & Jenny Rose
    re: opposing the project
30. Emails dated 01-29 & 02-02-08 to/from Dave Compton and Tammi Ray
    re: requesting clarification
31. Letter dated 02-02-08 to Planning Department from Betty Moos
    re: opposing the project
32. Letter dated 02-05-08 to Dave Compton from unknown sender
    re: opposing the project
33. Letter dated 02-05-08 to Dave Compton from Patrick Kenney
    re: request for further comment time
34. Letter dated 02-05-08 to Dave Compton from Steve Taylor
    re: supporting the project
35. Email dated 02-05-08 to Mayor Verner from Anne Magner
    re: requesting City attendance at a neighborhood meeting involving the project
36. Letter dated 02-06-08 to Lori Ochoa, Dept. of Ecology from Michael Smith
    re: requesting departmental review of project
37. Letter dated 02-06-08 to Upper Columbia United Tribes from Michael Smith
    re: requesting review of project
38. Email dated 02-06-08 to Dave Compton from Collette & Don McIntyre
    re: opposing project
39. Email dated 02-07-08 to Dave Compton from Mike Saruwatari
    re: opposing project

40. Email dated 02-07-08 to Dave Compton from Councilwoman McLaughlin
    re: requesting comments regarding Michael Smith's email (attached)
41. Email dated 02-07-08 to Dave Compton from Ted Danek
    re: requesting comments regarding Michael Smith's email (attached)
42. Email dated 02-07-08 to Dave Compton from Ted Danek
    re: requesting comments regarding Michael Smith's email (attached)
43. Letter dated 02-07-08 to Dave Compton from Dennis & Anne Magner
    re: concerns and opposing project
44. Letter dated 02-07-08 to Councilwoman McLaughlin from Michael Smith
    re: concerns and opposing project
45. Letter dated 02-07-08 to Mayor Verner from Michael Smith
    re: concerns and opposing project
46. Letter dated 02-07-08 to US Army Corps of Engineers from Michael Smith
    re: requesting department review
47. Fax dated 02-08-08 to Dave Compton from Victor Lewis
    re: concerns and opposing project
48. Letter dated 02-08-08 to Dave Compton from Lois Moore
    re: opposing project
49. Email dated 02-21-08 to Dave Compton from Tammi Ray
    re: procedural inquiries
50. Letter dated 02-21-08 to Leroy Eadie from Sharon Whjpps
    re: opposing project
51. Letter dated 02-21-08 to Leroy Eadie from John & Jenny Rose
    re: opposing project
52. Email dated 02-22-08 to Dave Compton from Tammi Ray
    re: procedural inquiries
53. Email dated 02-24-08 to Dave Compton from Tammi Ray
    re: procedural inquiries
54. Email dated 02-25-08 to Tammi Ray from Dave Compton
    re: response to inquiries
55. Email dated 02-25-08 to Tammi Ray from Dave Compton
    re: response to inquiries
56. Email dated 02-25-08 to Tammi Ray from Dan Wolf
    re: paving waiver comment
57. Fax cover sheet dated 02-26-08 to Dan Wolf from Dave Compton
    re: attached documents
58. Email dated 03-10-08 to Tammi Ray from Hearing Examiner
    re: response to request for change
59. Letter dated 03-11-08 to Appellants and Applicants from Hearing Examiner
    re: setting the appeal hearing date
60. Letter dated 03-11-08 to Appellants and Applicants from Hearing Examiner
    re: appeal hearing procedures

FINDINGS AND CONCLUSIONS

In a decision dated February 19, 2008, David Compton, the acting Current Planning Manager (hereinafter "Decisionmaker") granted an administrative conditional use permit to Ash Court Development, LLC for a 9 unit cottage housing development. The administrative

conditional use permit is a Type II permit which can be issued administratively by the Planning Department rather than by the Hearing Examiner after a public hearing. The proposed project is to be located at 3219, 3236, 3242, and 3246 North Ash Place in the City of Spokane, Washington. The site consists of approximately 1.06 acres in area, and it is to be developed with 9 cottage style housing units. Cottage style housing is a new addition to the City's Residential Zoning Regulations and the Decisionmaker noted that this was the first proposal of its type under the new regulations. See SMC 17C.110.350.

After that decision was issued, two appeals were filed. One was filed by Tammi S. Ray and a second was filed by Dave Kelly (hereinafter Appellants). Both were timely filed. Appeals of Type II project permit decisions are to the Hearing Examiner pursuant to SMC 17G.060.210. A hearing was held on the two appeals on Thursday, April 3, 2008 in the City Council Chambers, Lower Level of Spokane's City Hall. At that time testimony was taken and exhibits were entered into the record. Based upon the record, the testimony at the hearing and the appeal statements submitted by the appellants, the Hearing Examiner by this decision makes the following findings and conclusions.

Many issues were raised in the appeal statements, some of which were addressed in testimony and some of which were not. The Hearing Examiner finds that the objections which related to density are without merit. The zoning of this site is Residential Single Family which, under the Comprehensive Plan, allows residential development at a density of between 4 and 10 units per acre. This site contains just over one acre and as proposed it contains 9 single family residences, so the density proposed is allowed by the code. The cottage housing ordinance requires that any site be at least one-half acre in size and this site is twice that large.

The proposal also will be required to meet the site development standards of the ordinance which includes floor area limitations, total square footage limitations, lot coverage, height, and other standards. The plan submitted by the applicant show that these standards can be met. The site plan, which is in the record as Exhibit #3D shows a large open space area in the center of the site with the cottages being located around the outside. Much of this center area may have to be used for drainage controls but the applicant still demonstrated at the hearing how the open space requirements of at least 250 square feet per unit can still be met separate from the larger area. In addition, parking is to be clustered and separated from the common area and it has certain development standards attached to it including the fact that no cluster of parking can contain more than 5 adjoining spaces. The applicant will have to comply with those requirements. There are also building design standards in the code. See SMC 17C.110.350(E). Prior to the final development of the site, the proposed building designs will be reviewed by the Design Review Committee to insure compliance with those standards.

Another issue raised by the Appellants is the increase in traffic on this road which is unpaved. The applicant's engineer submitted a trip generation letter, which is in the record as Exhibit #10. That letter shows that the proposal will generate on average, 86 additional weekday trips on this road. The Transportation Department accepted that trip generation letter and also found that the street and surrounding streets were capable of accepting that additional traffic. In addition, there is a requirement that the developer construct full frontage improvements to the road in front of the project as well as paving of the road from this project northward to join other paving. Therefore, this landowner is contributing to the improvement of the road as mitigation for the additional traffic.

There was also a concern expressed in the appeal for drainage impacts. There was testimony at the hearing by Grant Cummings who stated that he is a geotechnical engineer with 23 years of experience in the Spokane area. He stated that the site consists of basalt bedrock and probably would need an evaporation pond to control drainage rather than using an infiltration type system. He was also concerned about the fact that some drainage may flow downhill to Ash Street, the arterial to the east making it icy in winter. The applicant's engineer testified that they have not finalized their stormwater system yet but he is not convinced at this point that infiltration is impossible. They will need a final geotechnical study to determine which method of drainage controls they will use. They must comply with the City's Stormwater Drainage Control Ordinance and their final drainage plan must be approved by the City's Engineering Services Department. Depending on what that final plan looks like, it may be that the site plan will have to be modified in some way. It is a common practice for the City to accept a concept drainage plan during the application process contingent upon the review and approval of a final stormwater plan before building permits are issued.

Finally, there were allegations that the development of the site as proposed would cause harm in some way to the adjacent Drumheller Springs Park, its flora and fauna or to some of the historic features in the area. There was no evidence presented as to how this would occur or exactly what damage could be expected. There was also no evidence to show that this proposal would cause damage over and above building fewer but larger single family homes on this site which the Appellants seemed to favor. The Hearing Examiner finds this argument, therefore, to be without merit.

DECISION

Based on the Findings and Conclusions above, it is the decision of the Hearing Examiner to uphold the approval of the administrative conditional use permit for this proposal. The applicant must comply with the conditions of approval set forth in the Planning Departments decision and also the conditions set forth in the comments from Traffic Engineering and Engineering Services which are in the record.

DATED this 17th day of April 2008.

Greg Smith
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding administrative appeals are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE DECISION SET OUT ABOVE.** The date of the decision is the 17th day of April 2008. **THE DATE OF THE LAST DAY TO APPEAL IS THE 8th DAY OF MAY 2008.**

In addition to paying any Court costs to appeal the decision, you may be required to pay a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.